

Appl. No. 10/027,751
Resp./Amdt. dated Jun. 2, 2006
Reply to Office Action of 04/13/2006

REMARKS/ARGUMENTS

There are no amendments to the specification or drawings herein.

In the Claims, Claims 1-32 are pending. Claims 16-26 were allowed. Claims 1-3 and 27-29 were rejected. Claims 4-15 and 30-32 were objected to. Herein, Claims 2-4 and 28-32 are amended and Claims 1 and 27 are cancelled, without prejudice. Reconsideration is respectfully requested.

Applicant appreciates the allowance of Claims 16-26, as originally filed, and the Examiner acknowledgement of the allowability of Claims 4-15 and 30-32 if rewritten in independent form. Pursuant to the Examiner's acknowledgement, Applicant has rewritten Claims 4, 30 and 32 in independent form including all of the limitations of the base claim and any intervening claims, as suggested by the Examiner. Specifically, Claim 4 is amended to include all of the limitations of base Claim 1, while Claims 30 and 32 are amended to each include all of the limitations of base Claim 27. Claims 1 and 27 are cancelled above, without prejudice. No new matter is added and no new issues are raised by these amendments that would require a further search by the Examiner. Support for the amendments is provided at least by the claims as originally filed. Entry and consideration of the amendments of Claims 4, 30 and 32 are respectfully requested.

Further, Applicant has amended Claims 2-3 to be dependent from amended Claim 4 and has amended Claims 28-29 to be dependent from amended Claim 32. Claim 31 is amended to correct a minor informality to put the claim in better condition for allowance. No new matter is added and no new issues are raised by these amendments. Support for the amendments is provided at least by the claims as originally filed. Entry and consideration of the amendments of Claims 2-3, 28-29 and 31 are respectfully requested.

The Examiner rejected Claims 1 and 27-28 under 35 U.S.C. 102(b) as being anticipated by Marks, U.S. Pat. No. 5,758,273 (hereinafter 'Marks').

Applicant traverses the rejection of Claims 1, 27 and 28 on the grounds that the Examiner failed to establish a *prima facie* case of anticipation with respect to Marks. In particular, as was explained in detail in a previous Response/Amendment

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filed January 11, 2006 (hereinafter ‘Previous Response’), Marks fails to disclose, explicitly or implicitly, “each element of the claim under consideration” (*W.L. Gore & Associates v. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983)) and further Marks does not disclose the claimed elements “arranged as in the claim” (*Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984)), as required by the Federal Circuit for *prima facie* anticipation under 35 USC 102.

However, in the interest of expediting the prosecution to issuance, Applicant has cancelled base Claims 1 and 27, without prejudice, and has amended Claim 28 to be dependent from Claim 32, which was deemed allowable by the Examiner. In no way do the cancellation of Claims 1 and 27 and the amendment of Claim 28 represent an admission by Applicant that Marks anticipates Applicant’s originally filed Claims 1 and 27-28, as contended by the Examiner. Applicant reserves the right to pursue the subject matter of Claims 1 and 27-28, as originally filed, in a continuation application under 37 CFR 1.53. As such, the rejection of Claims 1 and 27-28 under 35 U.S.C. 102(b) as being anticipated by Marks is respectfully moot and should be withdrawn.

The Examiner rejected Claims 1 and 27 under 35 U.S.C. 102(b) as being anticipated by Apostolos, U.S. Pat. No. 5,079,735 (hereinafter ‘Apostolos’).

Applicant traverses the rejection of Claims 1 and 27 on the grounds that the Examiner failed to establish a *prima facie* case of anticipation with respect to Apostolos as was detailed in the Previous Response. As mentioned above, in the interest of expediting the prosecution to issuance, Applicant has cancelled base Claims 1 and 27, without prejudice, rendering moot the rejection under 35 U.S.C. 102(b) as being anticipated by Apostolos. Likewise, the cancellation of base Claims 1 and 27 is not an admission by Applicant that Apostolos anticipates Applicant’s originally filed Claims 1 and 27, as contended by the Examiner. Reconsideration and withdrawal of the rejection is respectfully requested.

The Examiner rejected Claims 2-3 and 29 under 35 U.S.C. 103(a) as being unpatentable over Marks in view of Bell et al., U.S. Patent No. 5,491,548 (hereinafter ‘Bell et al.’).

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Applicant respectfully traverses the rejection under 35 U.S.C. 103(a) on the grounds that the Examiner failed to establish and properly support a *prima facie* case of obviousness with respect to Marks in view of Bell et al. (hereinafter ‘the references’). In Applicant’s Previous Response, Applicant identified the reasons why *prima facie* obviousness had not been established. That notwithstanding, in order to expedite the prosecution of this application, Claims 2-3 are amended herein to be dependent from and include all of the limitations of base Claim 4, as amended herein. Further, amended Claim 29 is amended herein to be dependent from and include all of the limitations of base Claim 32, as amended herein. Therefore, amended Claims 2-3 and 29 are now dependent from amended base Claims 4 and 32, which were deemed allowable by the Examiner. The amendments made to Claims 2-3 and 29 do not represent an admission by Applicant that Marks in view of Bell et al. render obvious Applicant’s originally filed Claims 2-3 and 29, as contended by the Examiner. Applicant reserves the right to pursue the subject matter of Claims 2-3 and 29, as originally filed, in a continuation application under 37 CFR 1.53.

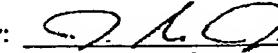
If an independent base claim is allowable and thus non-obvious under 35 U.S.C. 103, any claim depending therefrom is likewise non-obvious. *In re Fine*, 837, F.2d, 1071, 5 USPQ 2d, 1596 (Fed. Cir. 1988). Hence, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of Claims 2-3 and 29 under 35 U.S.C. 103(a) as being unpatentable over Marks in view of Bell et al.

In summary, Claims 1-32 are pending. Claims 16-26 were allowed. Claims 1-3 and 27-29 were rejected and Claims 4-15 and 30-32 were objected to. Claims 2-4 and 28-32 have been amended herein. Claims 1 and 27 have been cancelled, without prejudice. It is respectfully requested that Claims 2-15 and 28-32, as amended herein, be allowed along with allowed Claims 16-26, and that the application be passed to issue at an early date.

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Should the Examiner have any questions regarding the above, the Examiner is urged to contact the undersigned by telephone at the number given below, or John L. Imperato, Attorney for Applicant, Registration No. 40,026 at Agilent Technologies, Inc., telephone number (408) 553-2311.

Respectfully submitted,
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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on the date shown below.


J. Michael Johnson

6/2/06
Date

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